IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO. 262 OF 2007

Shri Trimbak Bandu Kadam .. Appellant
v/s.
Sau. Kalpana Dattatraya Kadam .. Respondent

Mr. R.A. Thorat and Mr. P.J. Thorat for the appellant.
Mr. P.G. Chavan for the respondent.

CORAM : A.M. KHANWILKAR, J.
DATED : 13TH JULY, 2007

P.C.

Heard counsel for the parties.

2. No substantial question of law arises for consideration. Two courts below have clearly recorded the finding of fact which is supported by the evidence on record that the plaintiff continues to be owner of the suit property being originally survey No.29/2 now Gat No.184, Admeasuring 2 Hectors and 15 Ares. There is nothing to accept the argument of the appellant-defendant that the said property has now vested in him by virtue of partition deed. The fact that there was partition under which the suit property stood transferred to the appellant-defendant, no such issue is framed by the trial court or by the appellate court. This argument, therefore, cannot be entertained for the first time before this court. The suit instituted by the respondent-plaintiff was on clear assertion that she was the absolute owner of the suit property, having purchased the same from Bandu under additional sale deed dated 17th June, 1985. That claim has been accepted by the court below. There is no evidence to support the claim of the appellant-defendant that the property has been transferred by the respondent-plaintiff in favour. According to the counsel for the appellant, the fact

that there was partition, has been specifically raised before the lower court. However, it is obvious that the appellant did not insist for framing of that issue before the lower court; nor such request was made before the appellate court. Unless that issue was to be framed and addressed before the two courts below, the argument that the appellant-defendant has become owner of the suit property by virtue of such partition cannot be countenanced in the present appeal which is second appeal.

3. Counsel for the respondent is justified in pointing out that no such ground is specifically raised in the appeal memo filed before the lower court and in fact, the factum of partition on which the appellant was relying has been challenged by Bandu by filing substantive suit being suit No.216 of 1987. In that suit, the appellant has admitted that the suit property was self-acquired property of Bandu and could not have been reckoned for the purpose of partition. Be that as it may, no substantial question of law arises. Dismissed.

(A.M. KHANWILKAR, J.)